

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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|---------------------------------|---|---------------------------------------|
| VERSUS TECHNOLOGY, INC., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. 04-1231 (SLR) |
| |) | |
| RADIANCE, INC., |) | |
| |) | |
| Defendant. |) | |
| |) | |

MOTION FOR LEAVE TO JOIN A NECESSARY PARTY

In light of new precedent from the Federal Circuit Court of Appeals (“Federal Circuit”), Plaintiff Versus Technology, Inc. (“Versus”) hereby moves the Court to join as a plaintiff, FreshLoc Technologies, Inc. (FreshLoc). FreshLoc is the owner and licensor of two of the four patents asserted by Versus against Defendant Radianse, Inc. (“Radianse”) in this suit, U.S. Patent No. 5,572,195 (D.I. 1, Ex. B) and U.S. Patent Reissue No. 36,791 (D.I. 1, Ex. C).

FreshLoc granted an exclusive license to Versus for a period that is less than the full term of the licensed patents. The recent Federal Circuit decision in *Aspex Eyewear, Inc. v. Miracle Optics, Inc.*, --- F.3d ---, 2006 WL 44185 (Fed. Cir. Jan. 10, 2006) (Exhibit 1 hereto), clarifies the previously unsettled question of law regarding whether an exclusive patent licensee for less than the full-term of the patent can maintain an infringement suit on the patent without joining the patent owner. The Federal Circuit determined that the patent owner must be joined. In light of this recent decision, and pursuant to Rules 15(a), 17(a), 19(a), 20(a) and 21 of the Federal Rules of Civil Procedure, Versus seeks to amend its initial and only Complaint in this matter (D.I. 1) to join FreshLoc as a party plaintiff to this action.

FreshLoc's president, Alan C. Heller, has agreed to accept service of the summons and amended complaint on behalf of Freshloc. Joinder of Feshloc will not prejudice any party and should provide no cause for a delay of this litigation. Mr. Heller, also the primary inventor for the two patents licensed to Versus, has already provided documents and has been deposed pursuant to a subpoena by Radianse.

Should the Court allow the Complaint (D.I. 1) to be amended to join Freshloc as a party, Radianse's Motion to Dismiss Based upon Lack of Standing (D.I. 78) will be moot.

Radianse opposes this motion, despite Versus efforts to reach agreement pursuant to Local Rule 7.1.1. Pursuant to Local Rule 15.1, duplicate copies of the proposed Amended Complaint are attached hereto as Exhibit 2. Pursuant to Local Rule 3.2, copies of the patents in suit attached as Exhibits A-D to the original Complaint (D.I. 1) are incorporated herein by reference. Further pursuant to Local Rule 15.1, a redline version showing the changes from Versus's initial Complaint is attached hereto as Exhibit 3.

In light of the above, Versus respectfully requests that the Court grant Versus leave to file an amended complaint to join FreshLoc as a party plaintiff.

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ, LLP

DATED: January 19, 2006

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UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2006, I electronically filed the foregoing documents with the Clerk of the Court using CM/ECF, and served copies of the same on this date the following individuals in the manner indicated:

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